

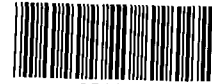


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS TX 75202-2733

August 20, 2010

F. William Mahley  
Strasburger & Price LLP  
1401 McKinney Street, Suite 2200  
Houston, Texas 78010-4035



651344

RE: Gulfco Marine Maintenance Superfund Site in Freeport Texas

Dear Mr. Mahley:

This letter is in response to the August 16, 2010, letter from Dow Chemical Company and Sequa Corporation (Gulfco PRP Group) in which the Gulfco PRP Group declined to enter into an Administrative Order on Consent to conduct an Engineering Evaluation and Cost Analysis (EE/CA) for the ecological removal at the Gulfco Marine Maintenance Superfund Site (Gulfco Site). The Environmental Protection Agency (EPA) and the Gulfco PRP Group have been exploring the Gulfco PRP Group's April 23, 2010 proposal to perform an ecological removal in lieu of performing the Baseline Risk Assessment required by the Amended Unilateral Administrative Order for the Remedial Investigation and Feasibility Study (Amended UAO RI/FS) for the Gulfco Site. EPA would like to address three sticking points in our discussions.

I: EPA refusal to grant Extension of Time during the negotiation process.

As you know, the Gulfco PRP Group has been performing an RI/FS since an UAO was issued on July 30, 2005. EPA amended the UAO after its issuance to add an additional party but the work to be performed has not changed since 2005. Until December 2009, EPA granted every extension of time in the RI/FS schedule requested by the Gulfco PRP Group, and during the period from 2005 until December 2009, EPA identified no violations of the UAO.

In December 2009, EPA decided to adopt a less generous approach to extension requests at the Gulfco Site, in part because the entire RI/FS process typically takes twelve to 18 months to complete but after five years of work the Gulfco PRP Group has not completed even the Remedial Investigation portion of the RI/FS. The first deliverable due after EPA refused to grant extensions to the UAO schedule was the Final Screening Level Ecological Risk Assessment (SLERA) Report. The Gulfco PRP Group submitted the SLERA Report on December 14, 2009. EPA found the SLERA Report deficient in addressing EPA's comments, including failing to address EPA's findings that a Baseline Ecological Risk Assessment (BERA) would be required for the Gulfco Site. The Gulfco PRP Group subsequently submitted a corrected SLERA which EPA approved.

On April 23, 2010, the Gulfco PRP Group proposed to EPA that an ecological removal be conducted at the Site in lieu of the BERA components of the Amended UAO for the RI/FS, and they requested a stay of the deadlines for submitting the Final BERA Problem Formulation and the Final BERA Work Plan & Sampling and Analysis Plan in the Amended UAO for RI/FS. EPA declined to grant an extension of the deadlines. The Gulfco PRP Group submitted the Final BERA Problem Formulation and the Final BERA Work Plan & Sampling and Analysis Plan on May 10, 2010. EPA found both deliverables deficient in addressing EPA's comments and in violation of the Amended UAO for RI/FS. The EPA sent the PRP Group a deficiency letter giving the PRP Group fourteen days to cure the UAO violations.

The EPA met with the PRP Group on May 17, 2010 to discuss the details of the proposal to conduct an ecological removal in lieu of the BERA required by the Amended UAO for RI/FS. At the meeting, the Gulfco PRP Group requested an extension of deadlines in the UAO for RI/FS. EPA did not grant any extensions or suspend any of the UAO deliverables. In particular, EPA did not suspend or delay the deadline for the BERA deliverable while EPA and the PRP Group explored the ecological removal proposal. EPA continues to believe additional extensions are not appropriate while the parties talk and consider alternative approaches given the extraordinary delay that has already occurred in conducting the RI/FS at the Gulfco Site.

II. PRP's demand that any Sampling and Analytical Analysis Required for the Site be approved by the PRP Group prior to entering to an agreement.

The EPA engaged in good faith discussions with the PRP Group regarding the possibility of entering into an EE/CA AOC for the conduct of sampling and analysis for the northern portion of the site for ecological removal in lieu of the BERA required by the UAO. The Agency was disappointed that the PRP Group did not respond for nearly three weeks, and then the response came only after EPA set a deadline for a decision by the PRP Group. On the night before the deadline expired, EPA received the demands the PRP Group required before the PRP Group would enter into an AOC. One of the demands was that all the sampling and analysis that would be required for any subsequent removal action be spelled out in the document. The PRP Group edited EPA's Statement of Work to include a description of the specific sampling and analysis the PRP Group would perform, language stating that this was the only sampling and analysis required for the EE/CA, and a provision that any additional sampling or analysis EPA determines to be necessary for the Site would not occur unless the PRP Group approved of that particular sampling or analysis.

The EPA rejected those suggested changes. While EPA can agree to spelling out the sampling and analysis expected to be necessary for the EE/CA, the Agency cannot accept a provision that only the sampling and analysis spelled out in the SOW is required for the EE/CA. EPA must retain the flexibility to adjust sampling and analysis requirements as information is discovered during the EE/CA process. Additionally, based upon EPA's initial review of the sampling and analysis plan proposed by the PRP Group, it appears that no sampling and analysis for Arsenic, Lead, Nickel, or Copper for

the wetlands sediments was included. Sampling and analysis for these metals for the wetlands sediments will need to be done in order to properly characterize the Site. While we appreciate the PRP Group's desire to have EPA spell out its requirements for the Site in advance, EPA simply cannot foresee all sampling and analytical needs in advance and must retain its ability to make appropriate adjustments.

III. PRP's demand that Remedial Outcomes be Guaranteed Prior to Acquisition of Sampling Results.

The PRP Group also seeks language in the AOC assuring that the completion of the EE/CA and any subsequent removal action would eliminate the possibility that a BERA would be required for the Site. EPA is not in a position at this point in the RI/FS to give assurance of such an outcome. EPA cannot enter into an agreement that requires it to commit at the front end to a particular result as to the remedy or sampling results.

IV. Conclusion

The EPA is once again disappointed that the Agency and the PRP Group are not able to reach agreement upon an aspect of sampling or cleanup for the Site. The EPA has over the years entertained many proposals from the PRP Group concerning the assessment and clean-up of the Site. Unfortunately, these proposals have been consistently derailed for the same reasons described above, including the PRP Group's insistence that only certain types of sampling should occur at the site and that EPA must be bound by those limits on sampling, as well as the Group's insistence that a decision on the remedy for the Site be made prior to collection and analysis of all necessary information.

The EPA is willing to revisit the possibility of entering into an AOC for the tank removal for the Site. However, if we are ever to successfully negotiate an agreement, the PRP Group must decide that it will accept EPA's need for flexibility in the response process. As always, I look forward with working with you on the tank removal AOC. The EPA is working on finalizing the Action Memo (AM) and should have the AM and the AOC for your review shortly. If you have any questions, please contact me at 214-665-2157.

Sincerely,

*Barbara A. Nann*

Barbara A. Nann

Assistant Regional Counsel